

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

HIGHMARK, INC. )  
 )  
Plaintiff )  
v. ) Civil Action No. 4:03CV1384-Y  
 )  
ALLCARE HEALTH )  
MANAGEMENT SYSTEM, INC. )  
 )  
Defendant. )

**DEFENDANT'S UNOPPOSED MOTION FOR LEAVE TO FILE AMENDED  
ANSWER AND COUNTERCLAIM AND BRIEF IN SUPPORT THEREOF**

Defendant-Counterclaimant Allcare Health Management System, Inc. ("Allcare") files this  
its unopposed motion for leave to file its amended answer and counterclaim and brief in support  
thereof, and would respectfully show the Court as follows:

1. On April 3, 2003, plaintiff Highmark, Inc. ("Highmark") commenced this action  
against Allcare in the United States District Court for the Western District of Pennsylvania. The  
action was thereafter transferred to this Court. On December 16, 2003, Allcare filed its answer and  
counterclaim. Highmark thereafter filed its motion for judgment on the pleadings as to defendant's  
fifth affirmative defense and related claims and averments (Highmark's Motion").

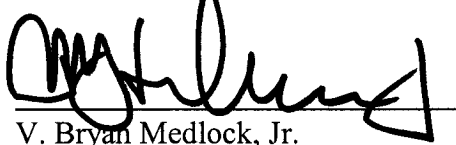
2. Allcare desires to amend its answer and counterclaim to withdraw its Fifth  
Affirmative Defense and claims and averments related to *res judicata* and collateral estoppel.  
Rule 15(a) of the Federal Rules of Civil Procedure provides that leave should be freely given when  
justice so requires. Therefore, Allcare seeks leave of this Court to amend its answer and  
counterclaim. Highmark does not oppose this motion. Per the parties' stipulation and agreement,  
upon the filing of Allcare's amended answer and counterclaim, Highmark's Motion will be moot.

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3. A copy of Allcare's amended answer and counterclaim is attached hereto as Exhibit "A."

For the reasons stated above, Allcare requests that this Court grant its motion for leave to file its amended answer and counterclaim, and grant such other and further relief to which Allcare may show itself justly entitled.

Respectfully submitted,



V. Bryan Medlock, Jr.  
Texas Bar No. 13897400

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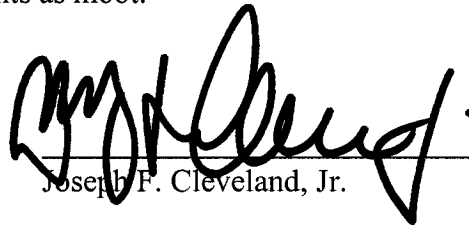
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ATTORNEYS FOR DEFENDANT  
ALLCARE HEALTH MANAGEMENT SYSTEM,  
INC.

**CERTIFICATE OF CONFERENCE**

Pursuant to the joint status report filed January 20, 2004, the parties stipulated and agreed that Highmark would not oppose Allcare's motion for leave to file an amended answer and counterclaim to withdraw its Fifth Affirmative Defense and claims and averments related to *res judicata* and collateral estoppel. The parties further stipulated and agreed that upon the filing of Allcare's amended answer and counterclaim, the parties will submit to the Court an agreed order denying Highmark's Motion for Judgment on the Pleadings as to Defendant's Fifth Affirmative Defense and Related Claims and Averments as moot.

  
\_\_\_\_\_  
Joseph F. Cleveland, Jr.

**CERTIFICATE OF SERVICE**


I certify that a true and correct copy of the above and foregoing motion was forwarded to plaintiff's counsel on the 26<sup>th</sup> day of January, 2004 addressed as follows:

Cynthia E. Kernick  
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**Via First Class Mail**

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**Via First Class Mail**

  
\_\_\_\_\_  
Joseph F. Cleveland, Jr.